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EX PARTE OR LATE FILED

December 16, 2005

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DEC 16 2005

Marlene H. Dortch
Secretary

Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Office of Secretary

**Re: EX PARTE SUBMISSION
WT Docket 03-66; Amendment of Parts 1, 21, 73, 74, and 101 of the
Commission's Rules to Facilitate the Provision of Fixed and Mobile
Broadband Access, Educational and Other Advanced Services in the
2150-2162 and 2500-2690 GHz Bands**

Dear Ms. Dortch:

Recent technical filings by Sprint Nextel Corporation ("Sprint Nextel") would have this Commission believe that clever engineering and coordination will somehow resolve interference between co-channel F group licensees in New York City, but not in Twin Falls, Idaho or any other city in the U.S. for that matter.¹ Sprint Nextel's stunningly inconsistent technical showings demonstrate that its support for a "split-the-football" approach for the F group in New York City is not based on valid technical grounds, but rather is a self-serving attempt to make the F group useless in New York City, so as to preclude competition from developing in a market where it already holds a dominant

¹ In its recent submissions, Sprint Nextel asks the Commission to make changes to its proposed technical operating rules in order to address potential co-channel and adjacent-channel interference concerns associated with height benchmarking of base stations and the deployment of CPEs. See, e.g., Letter to Marlene Dortch from Lawrence Krevor (December 5, 2005). These are two of the very problems that NY3G previously identified as preventing use of split-the-football for viable co-channel operations in New York City and that Sprint Nextel dismissed as easily remedied. See Letter to Marlene Dortch from Bruce Jacobs (May 31, 2005) and attached engineering statements; Letter to Marlene Dortch from Lawrence Krevor (October 27, 2005).

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share of this spectrum.² NY3G has irrefutably demonstrated in the record that a split-the-football approach in New York City for the F group co-channel licensees will create an exclusion zone denying service on that spectrum to millions of consumers in the heart of the nation's largest city. Sprint Nextel's submissions ratify NY3G's position and methodology. For these reasons, in the event of unresolved conflicts between co-channel licensees, the Commission should adopt another approach as the default rule in markets where the co-channel overlap is substantial, such as dividing the channels between the licensees instead of splitting the football.³ That way, even if both licensees are dissatisfied, the spectrum is still be usable for competitive services.

Very truly yours,



Bruce D. Jacobs
Tony Lin
Counsel for NY3G Partnership

cc: Fred Campbell
John Giusti
Barry Ohlson
Uzoma Onyeije
John Schauble

² See Letter to Marlene Dortch from Bruce Jacobs, at 4-5 (November 2, 2005) (discussing the potential anticompetitive impact of adopting a split-the-football approach).

³ Regardless of the exclusion zone issue, any attempt to split the New York City market down the middle leaves both halves non-viable for the provision of broadband service on that spectrum. See *id.* at 1-2.